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No. 92-1734

In the Supreme Court of the United States

OCTOBER TERM, 1993

DAVID W. NOELL, CO-EXECUTOR OF ESTATE OF MILTON J. NOELL, DECEASED, PETITIONER

v.

FEDERAL DEPOSIT INSURANCE CORPORATION

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

BRIEF FOR THE RESPONDENT IN OPPOSITION

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QUESTION PRESENTED

Whether the lower courts correctly concluded that under Texas law a guaranty imposed liability not only for $400,000 of the principal balance of the underlying debt, but also for unpaid interest on the outstanding balance of the underlying debt.

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OPINION BELOW

The opinion of the court of appeals (Pet. App. 1a-6a) is unreported, but the judgment is noted at 983 F.2d 231 (Table). The judgment of the district court (Pet. App. 20a-24a) and the findings of fact and conclusions of law of the magistrate judge (Pet. App. 9a-19a) are unreported.

JURISDICTION

The judgment of the court of appeals was entered on December 31, 1992. A petition for rehearing was denied on January 28, 1993. Pet. App. 7a-9a. The petition for a writ of certiorari was filed on April 27,

1993. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

1. On April 20, 1987, Addison Car Care, Inc. (Addison Car) and Northway National Bank executed a letter agreement, under which the bank agreed that it would loan Addison Car up to $1,370,000 to build and operate a car wash facility. The commitment was subject to a number of conditions, including a requirement that Milton J. Noell (Noell) execute a document "guaranteeing the obligations of [Addison Car under the loan] limited to $400,000." Commitment Letter ¶ 2, II R. 368; see Pet. 24.[1] The commitment also provided that "[t]he form, substance and execution of each and every document evidencing or incident to the [l]oan, * * * or any collateral security, * * * must be approved by [the bank's] counsel." Commitment Letter ¶ 20, II R. 377.

When the loan closed on June 10, 1987, Noell executed a guaranty, which stated that he "unconditionally guarantees unto the [bank] the payment of the Debt when due." Guaranty § 3.1, III R. 25; see Pet. 21-22. The document defined the term "Debt" to mean

> the indebtedness evidenced by the Note and the indebtedness to the [bank] incurred under or evidenced by the [other documents related to the loan], but such Debt shall be limited to $400,000.00, plus all accrued and unpaid interest on the unpaid principal balance of the Note in addition to indebtedness to the [bank] incurred under or

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[1] "R." refers to the record in the district court.

> evidenced by the [other documents related to the loan].

Guaranty art. I, III R. 25; see Pet. 22. When Addison Car failed to perform its obligations under the loan, the bank filed suit in the Texas courts against Addison Car and Noell. After Noell's death, petitioner, together with his co-executor Robert Noell, became defendants in the case.[2]

2. On February 15, 1990, the bank was declared insolvent and the Federal Deposit Insurance Corporation was appointed receiver. On that same day, the Federal Deposit Insurance Corporation as receiver sold its interest in the guaranty and related documents to the Federal Deposit Insurance Corporation in its corporate capacity (FDIC). The FDIC removed the case to federal district court in April 1990. Pet. App. 16a-17a; Docket Entry 1.[3]

3. After a bench trial, a magistrate judge held petitioner liable to the FDIC under the guaranty. Pet. App. 9a-19a. With respect to petitioner's liability on the guaranty, the magistrate judge stated simply that petitioner "is obligated for payment of past due principal in the amount of $400,000.00 plus all accrued and unpaid interest on the unpaid principal balance of the [note]." *Id.* at 18a.

4. The district court entered judgment in accordance with the magistrate judge's ruling. Pet. App.

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[2] The guaranty expressly bound not only Noell, but also his "heirs, devisees, executors, administrators, personal representatives, successors and assigns." Guaranty § 8.1, III R. 31.

[3] "Docket Entry" refers to the numbered docket entries in the district court.

20a-24a. Petitioner's total liability on the guaranty was $889,952.86. *Id.* at 21a-22a.

5. In an unpublished opinion, the court of appeals affirmed the judgment with respect to the matters at issue in this petition. Pet. App. 1a-6a. The court did not expressly address the issues raised in this Court, stating only that it found "no reversible error in the magistrate judge's interpretation of the agreements." *Id.* at 2a.

ARGUMENT

Petitioner argues (Pet. 16-38) that the lower courts erred in applying this Court's decision in *D'Oench, Duhme & Co.* v. *FDIC*, 315 U.S. 447 (1942), to preclude consideration of the commitment letter in determining the terms of petitioner's contract with the failed bank. Specifically, he contends that if the lower courts had considered the commitment letter they would have concluded that his total liability under the guaranty was limited to $400,000, and that he was not liable for interest or other costs beyond that amount. See, *e.g.*, Pet. 21-24.

Petitioner completely fails to show that the lower courts relied on *D'Oench, Duhme* to resolve this case. Rather, those courts apparently relied on the plain language of the guaranty to determine petitioner's obligations. As noted above, the guaranty provides that petitioner is liable for "$400,000.00, plus all accrued and unpaid interest on the unpaid principal balance of the Note." Guaranty art. I, III R. 25; see Pet. 22. Because that language so plainly imposes liability on petitioner for interest in addition to the $400,000 base amount, it would have been improper under Texas law for the lower courts to have considered the language of the commitment letter as

evidence to support a contrary reading of the guaranty. See, *e.g.*, *Houston Lighting & Power Company* v. *Tenn-Tex Alloy & Chemical Corporation*, 400 S.W.2d 296, 300 (Tex. 1966) (meaning of unambiguous documents cannot be altered by extrinsic evidence).

In any event, it is not at all surprising that the relatively spare language of the commitment does not precisely delineate the limits of the guarantor's obligations. The commitment describes the terms of the required guaranty in a single sentence, Commitment Letter ¶ 2, II R. 368, and subjects that description to the condition that the bank's counsel had to approve the form and substance of the guaranty before the loan could be closed, Commitment Letter ¶ 20, II R. 377. The actual guaranty was an eight-page single-spaced document including numerous provisions that could not plausibly have been set forth in a brief commitment letter. See Guaranty, III R. 25-32. In those circumstances, it would have been quite odd to conclude that the general terms of the commitment, rather than the precisely drawn terms of the operative document, accurately described the agreement of the parties. Cf. *Batterman* v. *Wells Fargo AG Credit Corp.*, 802 P.2d 1112, 1115 (Colo. Ct. App. 1990) (obligations under loan commitment merged into obligations under operative documents).

In sum, the decision of the lower courts appears to rest entirely on state law questions regarding the proper manner of interpreting a contract. There is no basis for supposing that the resolution of those questions—in which both of the lower courts concurred—presents any question worthy of attention by

this Court. Compare *Bishop* v. *Wood*, 426 U.S. 341, 345-346 (1976).

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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